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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,804	01/21/2004	Suman Preet Singh Khanuja	U 015000-9	2302

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LADAS & PARRY
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NEW YORK, NY 10023

EXAMINER

MI, QIUWEN

ART UNIT	PAPER NUMBER
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1655

MAIL DATE	DELIVERY MODE
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05/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/761,804	Applicant(s) KHANUJA ET AL.	
	Examiner Qiuwen Mi	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/4/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 13-28 is/are pending in the application.
- 4a) Of the above claim(s) 5,7,8,15-26 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,9,10,13,14 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's amendment in the reply filed on 4/4/07 is acknowledged.

Election/Restriction

Applicant's election of claims 1-14 in the reply filed on 10/23/2006 is maintained. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 5, 7, 8, and 15-26 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected method group and nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/23/2006.

Claims Pending

Claims 11 and 12 are cancelled. Claims 27 and 28 are newly submitted. Claims 1-10, and 13-28 are pending. Claims 5, 7, 8, 15-26, and 28 are withdrawn. Claims 1-4, 6, 9, 10, 13, 14, and 27 are examined on the merits.

Claim Rejections –35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 9, 10, 13, 14, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Baroni et al (US 2002/0068142), Bhagwat et al (US 6,429,231), Vandenberg et al (US 6,277,374), and Friedman et al (US 6,197,305).

Baroni et al teach a composition comprising garlic extract, geraniol, and cinnamon oil (paragraphs [0081, 0082]). It was specifically pointed out by Baroni et al that the composition has long lasting disinfection effect on fungi like *Candida albicans* (paragraph [0086]). In addition, Baroni et al indicates that propylene glycol is the suitable solvent for incorporation in the composition (paragraph [0104]).

Bhagwat et al teach a composition with anti-fungi activity comprising propylene glycol, stearyl alcohol and cetyl alcohol (column 4, lines 18-31; column 8, Table 2).

Vandenberg et al teach a composition with anti-fungi activity comprising 1% garlic extract that produces the highest concentration of FIC (mold inhibiting products) (column 6, Table 2).

Friedman et al teach a composition with anti-fungi activity comprising 0.1-5% cinnamon oil (title; column 2, lines 37-49).

It is well known that it is *prima facie* obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose. The idea for combining them flows logically from their having been used individually in the prior art. *In re Sussman*, 1943 C.D. 518; *In re Pinten*, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); *In re Susi*, 58 CCPA 1074, 1079-80; 440 F.2d 442, 445; 169 USPQ 423, 426 (1971); *In re Crockett*, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960).

Therefore, it would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to combine the inventions of Baroni et al, Bhagwat et al, Vandenberg et al, and Friedman et al since all of them teach a composition with anti-fungi activity individually in the art. Since all the compositions yielded beneficial results individually in the art, one of ordinary skill in the art would have been motivated to make the modifications. The result-effective adjustment in conventional working parameters (e.g., determining an appropriate amount of the components within the composition) is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Applicant's arguments filed on 4/4/07 have been fully considered but they are not persuasive.

Applicant argues that none of the references teach the unexpected surprising antidermatophytic fungal activity achieved by claimed oils, *Mentha specata var Ganga* and cinnamon oil when used together or separately with garlic extract. In the instant specification, Applicant does show synergistic effect obtained with the combination of three components *Mentha specata var Ganga*, cinnamon oil, and garlic extract (page 11, table 4). However, what Applicant claims is not commensurate with the scope of the specification. As indicated in claim 1, "an antifungal formulation comprising a garlic extract in propylene glycol, and an oil selected from the group consisting of essential oil of *Mentha specata var Ganga*, cinnamon oil and a mixture thereof..." is being claimed. According to the instant specification (page 10, Table 3), when garlic extract combines with either cinnamon oil or *Mentha spicata*, only antagonistic results or indifference results were obtained. Therefore claim 1 is not supported by the disclosure.

Applicant also argues that neither Friedman et al nor Vandenberg et al have used *Mentha specata var Ganga* as an essential oil. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

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Furthermore Applicant argues that Bhagwat discloses a formulation that is not limited to cetyl alcohol, steryl alcohol and propylene glycol. However, claim 2 recites “a formulation as claimed in claim 1 further comprising a base...” and “comprising” is an open language without any limitation, therefore Bhagwat’s disclose is allowed to have components other than “cetyl alcohol, steryl alcohol and propylene glycol”.

At last, Applicant argues that the combination of essential oil and garlic extract should be made according to their minimum inhibitory concentration, and Vanderbergh et al only teach a garlic extract at a concentration of 1-2.5%. However, Applicant mentions nothing about minimum inhibitory concentration in the claims, and a 1-2.5% garlic extract of Vanderbergh et al falls right into the range of 1-3% in claim 3.

Based on the statement above, the previous office rejections are maintained.

Conclusion

No claim is allowed.

The prior art made of record and not relied upon is considered pertinent to applicant’s disclosure.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'M. Meller', followed by a long horizontal line extending to the right.

**MICHAEL MELLER
PRIMARY EXAMINER**